

1 Article 11. Arbitration of Fee Disputes

2 Rule ~~114-1101~~. Definitions; ~~Purpose and Composition of the Committee~~ As used in
3 this article:

4 (a). "Bar" means the Utah State Bar;

5 ~~(A) As used in these Rules, the following terms are defined as indicated:~~

6 ~~(A)i.~~(b) "Chair" means the cChair of the Utah State Bar Fee Arbitration Committee;:

7 (c) "client" means a person or entity who, directly or through an authorized
8 representative, consults, retains or secures legal services or advice from a lawyer in the
9 lawyer's professional capacity;

10 ~~(A)ii.~~(d) "Committee" means the Utah State Bar Fee Arbitration Committee;:

11 (e) "decision" means the determination made by the panel in a fee arbitration
12 proceeding;

13 ~~(A)iii.~~(f) "~~E~~xecutive ~~D~~irector" means the Executive Director of the ~~Utah State~~
14 ~~Bar~~ or his designee;:

15 ~~(A)iv. "Bar" means the Utah State Bar.~~

16 ~~(A)v.~~(g) "~~H~~he" and the masculine pronouns includes "she" and feminine pronouns;:

17 ~~(A)vi. "Client" means a person or entity who, directly or through an authorized~~
18 ~~representative, consults, retains or secures legal services or advice from a lawyer in the~~
19 ~~lawyer's professional capacity.~~

20 ~~(A)vii. "Decision" means the determination made by the panel in a fee arbitration~~
21 ~~proceeding. See also, "Award" or "Judgment."~~

22 ~~(A)viii.~~(h) "~~L~~awyer" or "~~a~~Attorney" means a person admitted to the practice of law in
23 Utah, ~~which may. In these Rules, the term "lawyer" or "attorney"~~ includes a lawyer's
24 assignee;:

25 ~~(A)ix.~~(i) "Ppanel" means the arbitrator(s) assigned to hear a fee dispute and to issue
26 a decision;:

27 ~~(A)x.~~(j) "Ppetition" means a written request for fee arbitration in a form approved by
28 the Committee;:

29 ~~(A)xi.~~(k) "Ppetitioner" means the party requesting fee arbitration and can be either a
30 client or an attorney; and

31 ~~(A)xii.(l)~~ "R~~r~~espondent" means the party with whom the P~~p~~etitioner has a fee dispute
32 and can be either an attorney or a client.

33 Rule 14-1102. Purpose and composition of the committee.

34 ~~(B)(a)~~ The purpose of the Committee is to arbitrate fee disputes between attorneys
35 ~~practicing in the State of Utah~~ and their clients.

36 ~~(Cb)~~ The Committee shall consist of such number of members as may be
37 determined annually by the P~~p~~resident of the ~~State~~-Bar. The P~~p~~resident of the ~~State~~-Bar
38 shall designate one of the members of the Committee as the c~~c~~Chair. At the discretion of
39 the P~~p~~resident, a V~~v~~ice C~~c~~hair and/or S~~s~~ecretary may be appointed from the members
40 of the Committee.

41 ~~(Dc)~~ Participation in the fee arbitration process is non-mandatory. If all the necessary
42 parties elect in writing to arbitrate, however, the decision is binding.

43 ~~(Dd)i.~~ After all parties have agreed in writing to be bound by an arbitration
44 ~~award~~decision, a party may not withdraw from that agreement unless all parties agree
45 to the withdrawal in writing.

46 Rule 14-1103. Exclusions.

47 ~~(Ea)~~ Disputes not subject to arbitration. These r~~r~~ules do not apply to the following:

48 ~~(E)i.(a)(1) Malpractice. D~~disputes where-in which the client seeks relief against a
49 lawyer based upon alleged malpractice. The arbitration panel may consider evidence
50 relating to claims of malpractice and professional misconduct, but only to the extent that
51 those claims bear upon the fees, costs, or both, to which the lawyer claims he is
52 entitled. The panel may not award affirmative relief in the form of damages for injuries
53 underlying any such claim;

54 ~~(E)ii.(a)(2) Court Orders. D~~disputes where-in which entitlement to, and the amount of
55 the fees and/or costs charged or paid to a lawyer by the client or on the client's behalf,
56 have been determined by court order;

57 ~~(E)iii.(a)(3) Statute of Limitations. A~~disputes where-in which the request for
58 arbitration is filed more than four years after the lawyer/client relationship has been
59 terminated, or more than four years after the final billing has been received by the client,

or the civil action concerning the disputed amount is barred by the statute of limitations, whichever is later; and

~~(E)iv.(a)(4) Burdensome Matters.~~ Aat the discretion of the Executive Director or the Chair, disputes which are deemed to be administratively burdensome due to either: ~~(a)~~ the complexity, the nature or number of the factual and/or legal issues involved; or ~~(b)~~ the amount in controversy.

~~(Fb)~~ Mediation to be Considered. In those cases where all necessary parties refuse to be bound by arbitration, the Chair or his designee will advise the petitioner and the respondent of the option of entering into non-binding mediation. Mediation must be agreed upon by ~~both~~ the petitioner, respondent and third parties responsible for payment, if any.

Rule 214-1104. Steps Involved in Starting the Arbitration; Petition; Agreement to Arbitrate, Answer, Discovery; and Extension.

~~(Aa)~~ Petition and Agreement to Arbitrate. Proceedings before the Committee shall be started by the petitioning party ~~by~~ completing and filing a Verified Petition to Arbitrate Fee Dispute as well as an Agreement to Arbitrate Fee Dispute. The Petition and Agreement to Arbitrate shall be on forms provided by the Bar. When the Petition and Agreement to Arbitrate are completed and signed by the Petitioner, they shall be filed ~~in the office of~~ with the Bar.

~~(bB)~~ Answer. The ~~Executive Director Bar~~ shall forward to the Respondent the Petition and Agreement to Arbitrate, and ~~he shall~~ request that the Respondent sign and return the Agreement to Arbitrate and file an Answer to the Petition. The ~~Executive Director's letter Bar~~ will further advise that if the Respondent fails to answer and return the signed Agreement to Arbitrate within ten ~~(10)~~ days, the Committee will construe such failure as constituting a refusal by the Respondent to submit to arbitration. Upon the ~~Executive Director's Bar's~~ receipt of the signed Agreement to Arbitrate and Respondent's answer, the ~~Executive Director Bar~~ shall forward to the Petitioner a copy of the executed Agreement to Arbitrate and a copy of the Respondent's Answer.

(Cc) ~~\$10.00~~ Fee. After both parties have agreed to binding arbitration, the petitioner shall pay a \$10.00 fee. Unless the fee is paid, the proceeding will not go forward.

(Dd) Respondent's ~~r~~Refusal to ~~a~~Arbitrate. ~~In the event if~~ the ~~R~~respondent refuses to submit the fee dispute to arbitration, the ~~Executive Director~~~~Bar~~ shall notify the ~~P~~petitioner and the ~~C~~chair. No fee arbitration proceeding shall be conducted unless the respondent agrees to binding arbitration in writing. ~~In the event if~~ all the parties refuse binding arbitration, the ~~C~~chair or his designee shall encourage the parties to elect mediation under Rule ~~4(F)~~14-1103 (b).

(Ee) Subpoena and ~~D~~discovery. The provisions of Utah ~~Code Ann. § 78-31a-8~~Uniform Arbitration Act pertaining to the issuance of subpoenas in arbitration proceedings shall be applicable to arbitration proceedings held pursuant to these ~~R~~rules. The ~~C~~chair, in his sole discretion, ~~and~~ upon the motion of ~~P~~petitioner or ~~R~~respondent, may authorize the use of discovery procedures as provided in ~~the~~ Utah ~~Code Ann. § 78-31a-6.1~~Uniform Arbitration Act.

(fF) Extensions and ~~P~~postponements. The ~~C~~chair or his designee may grant extensions of time for the performance of any act required by these ~~R~~rules.

Rule 314-1105. Selection of the ~~A~~arbitration ~~P~~panel; ~~A~~additional ~~C~~claims.

(Aa) Designation of ~~p~~Panel ~~C~~composition. When the Committee has on file the ~~A~~agreement to ~~A~~arbitrate duly signed by all parties, and the ~~P~~petition and the ~~A~~answer, the ~~C~~chair or his designee shall designate from the Committee three ~~(3)~~ persons to serve as a panel for the arbitration. Each panel shall consist of one ~~(1)~~ lawyer licensed to practice law in ~~the State of~~ Utah, one ~~(1)~~ Utah ~~S~~state or ~~F~~federal ~~J~~judge, and one ~~(1)~~ non-lawyer. The ~~C~~chair or his designee, by written notice served personally or by mail to all parties to the arbitration, shall inform the parties of the names of the designated panel members. The ~~C~~chair shall ~~either~~ designate the ~~practicing~~ lawyer or the judge in each panel as the chair of the panel. The ~~C~~chair or his designee may request the panel chair to designate the non-lawyer member of the panel.

(Bb) Less ~~T~~than \$1,500 in ~~C~~controversy. Notwithstanding the provisions contained in ~~Rule 3(A) paragraph (a)~~, the ~~C~~chair or his designee shall designate from the Committee an arbitration panel consisting of one ~~(1)~~ lawyer ~~licensed to practice law in the State of~~

~~Utah~~ in those arbitration proceedings in which the amount in controversy is less than \$1,500.~~00~~.

(Cc) Assigning Ffile. When the composition of the panel has been determined~~as provided in Rule 3(A) or Rule 3(B)~~, the Cchair shall assign the file to the member(s) of the arbitration panel.

(Dd) New Cclaims. If new claims not set forth in the Ppetition are raised by a Rrespondent's Aanswer or by other documents in the arbitration, the consent of the Ppetitioner to the panel's consideration of such new claims shall not be required.

(Ee) Conflict of Iinterest. As soon as practical, an arbitrator shall notify the Committee of any conflict of interest with a party to the arbitration as defined by the Utah Rules of Professional Conduct. Upon notification of the conflict, the Committee shall appoint a replacement from the list of approved arbitrators.

Rule 414-1106. Conduct of the Hhearing; Eevidence and Ccivil Pprocedure; Rright to Ccounsel; Rright to Rrecord Hhearing; Eeffect of Ffailure to Aappear; Ppostponements.

(Aa) Setting of hHearing. The panel chair ~~under Rule 3(A), or the sole arbitrator under Rule 3(B), as the case may be~~, shall set a time and place for the hearing and shall cause written notice to be served personally or by mail on all parties to the arbitration, and on the remaining panel members, not less than ~~thirty (30)~~ days before the hearing. A party's participation at a scheduled hearing shall constitute a waiver on his part of any deficiency with respect to the filing of the notice of the hearing.

(Bb) Notice of hHearing and Rrights. In the notice of the hearing, the panel chair or sole arbitrator shall inform the parties of their right to present witnesses and documentary evidence in support of their respective positions, and to be represented by an attorney.

(Cc) Court rReporter and Ttranscripts. Any party may have the hearing reported by a certified court reporter at his expense, by written request presented to the panel chair or sole arbitrator at least three ~~(3)~~ days prior to the date of the hearing. The chair or arbitrator shall confirm with the court reporter that the requesting party, and not the Bar, is responsible for all costs of the court reporter. In such event, any other party to the

149 arbitration shall be entitled to obtain, at his own expense, a copy of the reporter's
150 transcript of the testimony by arrangements made directly with the reporter. When no
151 party to the arbitration requests that the hearing be reported, and the panel chair or sole
152 arbitrator deems it necessary to have the hearing reported, the panel chair or sole
153 arbitrator may employ a certified court reporter for such purpose if authorized to do so
154 by the ~~E~~xecutive ~~D~~irector in writing.

155 (~~D~~) Testimony ~~U~~nder ~~O~~ath. Upon request by any party to the arbitration or any
156 member of the panel, the testimony of witnesses shall be given under oath. When so
157 requested, any member of the panel or the court reporter may administer an oath to the
158 witness.

159 (~~E~~) Evidence and ~~C~~civil ~~P~~rocedure. The ~~fee arbitration~~ panel shall be the judge of
160 the relevancy and materiality of evidence offered and shall rule on questions of
161 procedure. The ~~fee arbitration~~ panel shall exercise all powers related to the conduct of
162 the hearing. Conformity to legal rules of evidence or civil procedure shall not be
163 required.

164 (~~F~~) Panel ~~m~~Member ~~F~~ailure to ~~A~~pppear. If, at the time set for any hearing, one of
165 the ~~three (3)~~ members of the panel is not present, the panel chair, or in the event of his
166 unavailability, the ~~C~~hair or his designee, in his sole discretion, shall decide either to
167 postpone the hearing, or with the consent of the parties, to proceed with the hearing
168 with the remaining two ~~(2)~~ members of the panel as the arbitrators.

169 (~~G~~) Party ~~F~~ailure to ~~A~~pppear. If any party to an arbitration who has been duly
170 notified fails to appear at a scheduled hearing, the panel may proceed with the hearing
171 and determine the controversy upon the evidence produced, ~~notwithstanding such~~
172 ~~failure to appear~~.

173 (~~H~~) Adjournment and ~~P~~ostponement. The panel chair or the sole arbitrator may
174 adjourn the hearing from time to time as necessary. Upon the request of a party and for
175 good cause, or upon the determination of the panel chair or sole arbitrator, the panel
176 chair or sole arbitrator may postpone the hearing from time to time.

177 (~~I~~) Failure of a ~~L~~awyer ~~R~~espondent to ~~R~~espond. Failure of a lawyer ~~R~~espondent
178 to file the fee arbitration response form shall not delay the scheduling of a hearing;

179 ~~however, in.~~ In any such case, the panel may, in its discretion, refuse to consider
180 evidence offered by the lawyer which would reasonably be expected to have been
181 disclosed in the response.

182 (Jj) Telephonic hHearings. In its discretion, a panel may permit a party to appear or
183 present witness testimony at the hearing by telephonic conference call. The cost of the
184 telephone call shall be paid by the party.

185 (Kk) Reopening of Hhearing. With good cause shown, the panel may reopen the
186 hearing at any time before a decision is issued.

187 (Ll) Burden of Proof and standard. The burden of proof shall be on the lawyer to
188 prove the reasonableness of the fee by a preponderance of the evidence.

189 Rule 514-1107. Award; Form; Service of Award; Judicial Confirmation of
190 Award.

191 (Aa) Time Frame. Whenever practical the panel, or sole arbitrator shall hold a
192 hearing within ~~sixty (60)~~ days after receipt of the Agreement to Arbitrate, signed by
193 both parties, and the signed Petition and Aanswer, and shall render its award within
194 ~~twenty (20)~~ days after the close of the hearing or the close of the final hearing if more
195 than one hearing has been held. The award of the panel shall be made by the majority
196 of the panel ~~when heard by more than one arbitrator, or by the one member of the panel~~
197 ~~designated as sole arbitrator under Rule 3(B), as the case may be.~~

198 (Bb) Delivery to Bar Office. The award shall be in writing, and shall be signed by
199 the members of the panel concurring ~~unless the hearing shall have been conducted by~~
200 ~~a single member as sole arbitrator, in which event the award shall be signed or~~ by the
201 sole arbitrator. The award shall include a determination of all questions submitted to the
202 panel or sole arbitrator which are necessary to resolve the dispute. The original ~~copy~~ of
203 the award shall be forwarded by the panel chair or sole arbitrator to the Bar office.

204 (Cc) Form. While the award is not required to be in any particular form, it should, in
205 general, consist of a preliminary statement reciting the jurisdictional facts, such as that a
206 hearing was held upon notice pursuant to a written agreement to arbitrate, the parties
207 were given an opportunity to testify and cross-examine, and shall include a brief
208 statement of the dispute, findings and the award.

(D)-(d) Service on Parties. ~~In the event the arbitration has proceeded, t~~The panel of ~~arbitrators~~ or sole arbitrator shall render a written decision which shall be forwarded by the panel chairman or sole arbitrator to the Bar office, ~~who~~ which shall then forward the decision to the Petitioner and the Respondent.

(Ee) Client Award – Judicial Confirmation. ~~In those instances in which If~~ the award ~~is in favor~~s of the client, and the attorney fails to comply with the award within ~~twenty (20)~~ days after the date on which a copy of the award is mailed to him, the client may seek a confirmation of the award in accordance with the Utah ~~Code Ann. § 78-31a-12~~ Uniform Arbitration Act but without further assistance by the Bar.

(Ff) Attorney Award – Judicial Confirmation. ~~In those instances in which If~~ the award ~~is in favor~~s of the attorney, and the client fails to comply with the award within ~~twenty (20)~~ days after the date upon which a copy of the award is mailed to the client by the Bar office the attorney may exercise his rights under the Utah ~~Code Ann. 78-31a-12~~ Uniform Arbitration Act, which provides for the judicial confirmation of arbitration awards but without further assistance by the Bar.

(G)-(g) Modification of aAward by Aarbitrators.

(G)i-(g)(1) Upon motion of any party to the arbitrators or upon order of the court pursuant to a motion, the arbitrators may modify the award if:

(G)i-(a)-(g)(1)(A) there was an evident miscalculation of figures or description of a person or property referred to in the award;

(G)i-(b)-(g)(1)(B) the award is imperfect as to form; or

(G)i-(c)-(g)(1)(C) necessary to clarify any part of the award.

(G)ii-(g)(2) A motion to the arbitrators for modification of an award shall be made within ~~twenty (20)~~ days after service of the award upon the moving party. Written notice that a motion has been made shall be promptly served personally or by certified mail upon all other parties to the proceeding. The notice of motion for modification shall contain a statement that objections to the motion be served upon the moving party within ten ~~(10)~~ days after receipt of the notice.

Rule 614-1108. Relief Ggranted by Aaward; Aaccord and Ssatisfaction Aapplication to Ccourt; Cconfidentiality; Eenforceability of Aaward; Cclaims of Mmalpractice.

(Aa) If the award determines that the attorney is not entitled to any portion of the disputed fee, service of a copy of such award on the attorney:

(Aa)i.(1) ~~T~~terminates all claims and interests of the attorney against the client with respect to the subject matter of the arbitration;

(Aa)ii.(2) ~~T~~terminates all right of the attorney to retain possession of any documents, records or other properties of the client pertaining to the subject matter of the arbitration then held under claim of the attorney's lien or for other reasons; and

(Aa)iii.(3) ~~T~~terminates all right of the attorney to oppose the substitution of one or more other attorneys designated by the client in any pending litigation pertaining to the subject matter of the arbitration.

(bB) If the award determines that the attorney is entitled to some portion of his fee, the award shall state the amount to which he is entitled. ~~and~~ Payment of this amount shall:

(Bb)i.(1) ~~C~~constitute a complete accord and satisfaction of all claims of the attorney against the client with respect to the subject matter of the arbitration;

(Bb)ii.(2) ~~T~~terminate all right of the attorney to retain possession of any documents, records or other properties of the client pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons; and

(Bb)iii.(3) ~~T~~terminate all right of the attorney to oppose the substitution of one or more other attorneys designated by the client in place of the attorney in any pending litigation pertaining to the subject matter of the arbitration.

(Cc) Confidentiality. All documents, records, files, proceedings and hearings pertaining to the arbitration of a fee dispute under these ~~R~~rules shall not be open to the public or to a person not involved in the dispute.

(Dd) ~~In any case where If~~ both parties have signed a binding Agreement to Arbitrate any award rendered in such case may be enforced by any court of competent jurisdiction in the manner provided in the Utah Uniform Arbitration Act (~~Utah Code Ann. § 78-31a-1 through 78-31a-20~~) without further assistance by the Bar. ~~See Rules 5(E) and 5(F).~~

(Ee) Claims of Mmalpractice. A decision rendered by the panel regarding a disputed fee generated by the attorney/client relationship shall not bar any claim the client may have against the attorney for malpractice by the attorney in the course of the attorney/client relationship.

Rule 714-1109. Ex Pparte Ccommunication between the Pparties and the Ppanel Mmembers.

There shall be no communication between the parties and the members of the arbitration-panel upon the subject matter of the arbitration other than the necessary notices and arbitration proceedings. Any other oral or written communication from the parties to the members of the panel, or from the members of the panel to the parties, shall be directed to the Bar office for transmittal.

Rule 814-1110. Necessary Pparties.

If the person responsible for the payment of legal fees wants to participate in fee arbitration but is not the former client who received or was intended to receive legal services, the former client must join in the request to arbitrate. ~~In the event that If~~ the former client is unavailable due to incarceration or other exigent circumstances, the person responsible for payment of the legal services shall obtain a special power of attorney for purposes of participating in the fee arbitration proceeding.

Rule 914-1111. Exemption Ffrom Ffuture Ttestimony and Cconfidentiality of Rrecords and Iinformation.

No Committee member participating in a fee dispute decision or mediation proceeding shall be called as a witness in any subsequent legal proceeding related to the fee dispute. Information and documentation submitted in a fee dispute proceeding shall be deemed confidential and shall not be disclosed other than to enforce a written decision. Notwithstanding the above, confidential information may be disclosed if the request is made to the Bar by:

(A)(a) aAn agency authorized to investigate the qualifications of persons for admission to practice law;

(B)(b) Aan agency authorized to investigate the qualifications of persons for government employment;

298 ~~(G)(c)~~ aA lawyer discipline enforcement agency; or

299 ~~(D)(d)~~ aAn agency authorized to investigate the qualifications of judicial candidates.

300 ~~These Rules shall be effective March 15, 2000, and shall govern all fee arbitrations~~
301 ~~filed with the Bar on or after March 15, 2000.~~

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